

LIBERTY, AGENCY AND HUMAN CAPABILITIES

LIBERTAD, AGENCIA Y CAPACIDADES HUMANAS

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Este ensayo examina la concepción liberal de la agencia desde un punto de vista crítico. Argumentamos que el liberalismo adopta lo que se llama concepción de agencia orientada a la libertad, que no es adecuada ni realista. Esta concepción del liberalismo se ha aliado con las fuerzas del Estado y el capital neoliberales. Argumentamos que grupos como los zapatistas, que han rechazado la lógica del neoliberalismo, y su concepción relacionada de la agencia, han sido criminalizados por el Estado por estas razones. Han recurrido a lenguajes alternativos de identidad y agencia para articular sus disputas en un discurso que el Estado está dispuesto a reconocer. En la conclusión, argumentaremos que debe entenderse que la agencia opera en un continuo. La agencia puede incrementarse continuamente al amplificar las capacidades humanas en contextos sociales, políticos y económicos particulares. Hacerlo significaría adoptar un enfoque de la política mucho más igualitario y redistributivo que el inspirado por la concepción clásica de agencia orientada a la libertad.

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Abstract

This essays examines the liberal conception of agency from a critical standpoint. We argue that liberalism adopts what is called liberty oriented conception of agency, which is neither adequate nor realistic. This conception of liberalism has become allied to the forces of the neoliberal state and capital. We argue that groups like the Zapatistas, who have rejected the logic of neoliberalism, and its related conception of agency, have been criminalized by the state for these reasons. They have turned to alternative languages of identity and agency to articulate their disputes in a discourse that the state

is willing to acknowledge. In the conclusion, we will argue that agency should be understood as operating on a continuum. Agency can be continually increased by amplifying human capabilities given particular social, political and economic contexts. Doing so would mean adopting a far more egalitarian and redistributive approach to politics than the one inspired by the classical liberty oriented conception of agency.

Palabras clave: Agencia, capacidades, zapatista, Liberalismo.

Keywords: Agency, capabilities, zapatista, Liberalism.

Introduction

The purpose of this essay is to examine an important feature of liberal ideology –its conception of agency– from a critical standpoint. We will argue that liberalism has been overly beholden to what one can call the liberty oriented conception of agency, or the political interpretation of agency as stemming a singular power that can freely operate when left unconstrained. This conception of agency is neither adequate nor realistic. Indeed, it has served to reinforce malignant ideologies around the world, particularly those allied to the forces of the neoliberal state and capital. Groups like the Zapatistas who have rejected the logic of neoliberalism, and its related conception of agency, have been criminalized by the state. In turn, they've been forced to turn to alternative languages of identity and agency to articulate their disputes in a discourse that the state is willing to acknowledge.

While reading from Zapatista resistance is informative, it is also important to generalize beyond this particular example of political resistance and mobilization so as to theorize on what a more universal and emancipatory conception of agency might look like. This would be a conception that eschews the limitations of the liberty oriented interpretation of agency, while maintaining its best features. The constructive part of this essay will argue that agency should be understood process, and as operating on a continuum; we can continually amplify it through better realizing various human capabilities given particular social, political and economic contexts. This would necessitate adopting a far more egalitarian and redistributive approach to politics than the one inspired by the classical liberty oriented conception.

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1) The liberty oriented conception of agency

Providing an extensive overview of the history of liberal thought, let alone the various ways it has been instantiated in practice, is well beyond the scope of this essay. Instead, we will be generalizing about how agency has historically been conceptualized in liberal philosophical canon. What we

call the liberty oriented conception of agency can be briefly summarized as follows: being a free agent means acting without being directly constrained by an external force. Consequently, liberty-oriented agency pivots the fundamental value assigned to negative liberty. While in the technical sense this is a metaphysical argument about human subjectivity, what makes liberalism unique is the moral and political twist it gives to this conception of agency. While each liberal thinker draws the link in distinctive and informative ways, the common take away from the liberty oriented conception of agency is that social and political institutions should be designed to enable individuals to operate as free agents except where their doing so runs counter to the rule of law or otherwise interferes with the rights of the individual's fellow 'man'.

While there are certainly important precursors, the first thinker to explicitly formulate the liberty oriented conception of agency was Thomas Hobbes. We will note briefly that the moral impetus behind adopting this conception is so strong that it is even held by liberals who reject the idea that human beings possess agency in any strong metaphysical sense. Hobbes, for example, held to compatibilist views which understood human beings as mechanically determined in the last instance, but moral agents in so far as they weren't constrained by an external power. Kant, on the other hand, held more sophisticated views which are quite complex. He seemed to believe that, understood phenomenally, it was impossible to escape the belief that human beings were governed by the same deterministic laws as all other phenomena. But since we only understand phenomena as appearances, and not as what things are in themselves, one is also granted licence to understand individuals as agents in the moral sense. How these two views are squared in the Kantian system, and whether it represents a successful philosophical synthesis, we will not take up here. Sufficed to say Kant felt that it was possible to simultaneously believe that the world was mechanistically determined and that all individuals were morally free.

Looking at Hobbes' work remains instructive since it already demonstrates some of the tensions that would later become more overtly problematic for liberal thinkers. Hobbes' conception of the world, and by extension human beings, is thoroughly deterministic. Our reading on this point is partly and loosely inspired by Richard Tuck's (2002) *Hobbes: A Very Short Introduction*. To this effect, we insist that Hobbes argues that previous thinkers, inspired by Scholastic Aristotelianism,

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adopted bizarre programs which ascribed special characteristics to human beings, and to human values, that don't stand up to rational scrutiny. We should be considered as matter in motion like everything else. But where other material objects are determined by more obviously physical laws, human beings are prompted to act by internal desires for external objects, such as food, material wellbeing, and sexual gratification (see Hobbes, 1985 eds.). Unfortunately, in a state of nature the means we employ to achieve our desires are often antithetical to the general interest, leading to the perpetual "warre of all against all" (See Hobbes, 1985 eds., 186). No prudent person would wish to reside in this state, since it is antithetical to long term desires to live in such danger. What is therefore needed is a political authority with coercive power sufficiently great and terrible to impose a stable social order within which human beings can live with safety. Any prudent person would recognize it was in their long-term interest to cede to this now sovereign authority, since the cost of disobeying it would be so great that no one but an anti-social "fool" –to borrow from Hobbesian language– would ever be motivated to do so.

Hobbes' account already contains most of what is germane to the liberty oriented conception of agency. Whether human beings are metaphysically free or not becomes a question of less philosophical significance than examining how an agent's singular liberty to pursue any desire becomes the locus for determining what is good and what is bad. Their internal desire for an external object is the fount of all action. Because Hobbes wishes to be thoroughly rational, he moves from this descriptive account to arguing that the achievement of desire is also the end of all moral systems. Hobbes adds a twist to this, demonstrating that granting all individuals an unlimited liberty to pursue any desire they wish would be both socially damaging and imprudent in the long run. Hobbes argument is not that liberty itself is bad; it is that its spurious exercise prevents individuals from acting in a manner that is conducive to their long-term interests. The development and exercise of political power is therefore justified to prevent agents from using their liberty in this anti-social way, while enabling them to otherwise pursue their various desires without the debilitating perpetuation of the "warre of all against all". Politics and law therefore become essential to the proper exercise of liberty, since it is in the sovereign state that the benefits of agency can be most enjoyed and fully realized.

Much of this basic theoretical structure would be carried forward and developed by other thinkers, gradually becoming linked to the standard package of liberal institutions and legal rights. Liberalism finally reached a decisive tipping point in the mid 18th century in the work of Rousseau (Rousseau, 1964). Rousseau was the first great advocate of what Berlin would later term "positive freedom", which held that agency could not simply be reduced to the "negative" liberty oriented conception and its politics (Berlin, 2000). Rousseau famously argued that the liberty protected in the still hypothetical liberal state, and the affiliated rights to property it would religiously defend, would become just as hierarchical and agency dampening as the overtly autocratic systems criticized by liberal

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thinkers. Most importantly, he argued that this was not simply because of the repression enacted by the bourgeois hierarchies which were already forming. Rousseau argued that the assimilation of degraded law and culture would make the citizens of liberal political systems resentful and greedy, willing to misconstrue a right to step over one another as liberty (Rousseau, 1964, p. 174-175).

Many liberal thinkers, most notably Kant, Hegel and John Stuart Mill, paid attention to these critiques and attempted to assimilate Rousseauian insights into their respective accounts of agency. Regardless, the “positive” dimensions of their liberalism remained widely ignored by the powers that be, and the liberty oriented conception of agency remained dominant in liberal thought and ideology. Most notably, it became increasingly important for ideologues to hold to the liberty oriented conception to buck the growing demand for the redistribution of property which emerged in the 19th century, further demanding a social, political and legal entrenchment of individual self-sufficiency. In the 19th and 20th century the contrast between “negative” and “positive” accounts of agency had not just become integrally linked to debates over the redistribution of property, but also colonial conquest. To those who followed Rousseau, it had become clear that the property rights upheld by advocates of the liberty oriented conception were barriers to the further realization of individual agency. On occasion, arguments for redistribution were driven by purely moral concerns, though often criticisms of capitalism were given a distinctive socio-historical bent. Those of an egalitarian bent agreed with classical liberals that the locus of the good was a free agent pursuing her desire. But they argued that the current regime imposed artificial constraints on most people, because they did not have the social or economic capacity to pursue their desires in any robust way. This struck at the heart of the liberty oriented conception. Its advocates had to toe the fine line between defending the centrality of agency while also demonstrating that moving beyond the confines of the liberty oriented conception was either dangerous or immoral.

In a modern context, the most prominent intellectual defenders of the liberty oriented conception of agency were Friedrich Hayek and Robert Nozick. Both thinkers offered Kantian inspired accounts of an individual’s agency linked to a firm belief that state attempts to redistribute property would inexorably establish illegitimate constraints on liberty. My understanding of Hayek as a Kantian draws on John Gray’s work (Gray, 1986, ch. 1). This is because state redistribution required falsely appropriating property individuals had acquired through free exchanges, and deploying it to pursue ends that they might not have chosen. Interestingly, neither of these thinkers invoked the classical liberal trope about capitalism being a system wherein free individuals, exercising their liberty, could become wealthy through hard work and grist. Hayek and Nozick likely understood that Lockean-style attempts to ascribe moral significance to a widely discredited economic theory of value could only end in conceptual confusion.

It is possible they were also concerned that the moral significance ascribed to the labour theory of value, which in its crude form held that the individual distribution of resources in

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liberal capitalist societies was proportionate to the labour invested in capital formation, would cede too much theoretical ground to Marxist economics. If it is true that labour is the source of all value, then it isn't too much of a step to follow Marx in historicizing political economy to demonstrate that those who work hardest often do not reap the major benefits of capitalism. From there it is a short walk to the theory of exploitation in a system of exchange. For this reason, Hayek ascribes relatively little weight to labour. Nozick's position is considerably more complicated. He accepts that our capacity to labour, and to benefit from our work, may well be morally arbitrary. But he also feels that to move from acknowledging the arbitrariness in capacities to a demand that the state rectify them invariably leads to violating the rights of individuals; including their right to be entitled to benefit from work done. This, we take it, is the substance behind his famous Wilt Chamberlain thought experiment.

Both theorists acknowledged that adhering to the liberty oriented conception of agency entailed that the distribution of property across a society would often be morally arbitrary; the deserving would suffer in poverty and the unworthy would become rich. For Hayek, this was justifiable for consequentialist reasons; what he took to be Kantian style liberty in economic affairs was necessary because unfettered markets were demonstrably best able to maximize the general welfare. Well-meaning individuals who may wish to rectify the arbitrariness of the market through social planning would inevitably create economic disruptions that interfered with the natural self-correcting features of the market. This is because the market had evolved into a well-functioning, if imperfect, system which enabled consumers and producers to exchange information about their respective needs and resources with little friction (Hayek, 1978). Economic planners would never be able to replicate the speed and efficiency of the market in transmitting social information (Hayek, 2007, p. 201). While he acknowledged that the state would and should engage in some redistributive activities, for instance, through providing unemployment insurance to protect individuals against market fluctuations, Hayek felt that the government often went too far in assuming responsibility for the provision of goods that would be better provided through the market.

For Nozick, the justification for holding to the liberty oriented conception of agency, especially in economic affairs, is that a minimal state is the type of political system which is justifiable. Only a minimal state would respect the liberty of its citizens through establishing rights as side constraints against interference by others (Nozick, 1974, p. 33). Any more robust state which sought to redistribute property to maximize welfare or to secure a more just and fair society would invariably end up treating individuals as a means to an end they would not have consented to. Though he acknowledged that individuals in a minimal state would acquire property for morally arbitrary reasons, Nozick none the less argued that such individuals would still be entitled to enjoy their property if they had acquired it from free and "uncoerced" exchanges (Nozick, 1974, p. 151), a statement we find deserving of interest given such a seizure of property seems impossible. To try and move beyond this, and distribute property in a way that compensated individuals for the morally arbitrary disadvantages they may have faced, would necessitate endlessly interfering in the lives of all to rectify both the caprice of nature and the pattern disrupting impact of liberty. In some respect, Nozick felt that going beyond the minimal state would ultimately necessitate treating people as little better than slaves.

While there is obviously a great deal more to be said on this history, we believe that is sufficient for the moment and for the purpose of this paper. This historical account of major highlights in the

development of the liberty oriented conception of agency indicates how, despite some criticisms and interesting side left-turns, the fundamental features of the conception have remained surprisingly constant. Agency is regarded as the capacity for individuals to engage in whatever actions they choose without being constrained by an external power. The corollary political and legal argument is that the state should refrain from imposing such constraints except where doing so is justified to protect the standard package of liberal rights. Most significantly, this has been taken as meaning that the state should refrain from interfering in the economic liberty of individuals through engaging in significant attempts to redistribute property. While some liberals such as Kant and Mill believed that the empirical dimension of their theories suggested agency might entail more than simply being unconstrained by external powers, this dimension of their thinking was largely ignored. This dimension of Kant's thought comes out most clearly in his historical writings (Kant, 1964).

In the next section we will argue that the liberty oriented conception faces certain conceptual and ideological difficulties which make it both theoretically untenable and an unattractive practical model for understanding agency. But we do not think it wise to break decisively from liberalism. There is much about liberal individualism, and its emphasis on the need to empower agency, that remains extremely appealing. And indeed, there are a growing number of liberal thinkers who have increasingly taken liberalism in radically egalitarian directions. Rawls was of course the great pioneer here. But one can also point to Ronald Dworkin, Amartya Sen, Martha Nussbaum, Seyla Benhabib, Jurgen Habermas, and even Roberto Unger as thinkers who've struggled to reconcile liberal individualism with a more egalitarian framework. Our own constructive contributions can be seen as contributing to this tradition. In the next section, after unpacking the most basic features of the liberty oriented conception that do not stand up to critical scrutiny, we will sketch out a theory of agency that draws insight from liberal individualism but seeks to orient it in a more egalitarian direction.

2) The limitations of the liberty oriented conception of agency

Now that we have briefly run through the liberty oriented conception of agency, and its corollary political and economic ideologies, we shall detail some of the conceptual limitations. In doing so we shall demonstrate some of the contradictions which lie at the heart of classical liberal ideology.

The liberty oriented conception of agency, for all its diverse interpretations, operates on the presumption that the capacity to be an agent is primarily matter of being empirically unconstrained. It understands the capacity for agency as flowing from a singular power that exists internally within the individual. The name given to this power differs across the plethora of liberal philosophers. To Hobbes it is appetite or desire, for Spinoza conatus, for Locke and Kant it is the free will, for Mill it is the capacity for self-government or independence in a political and social setting, and for Nozick the power is best conceived as a moral capacity to claim rights against

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interference from others which flows from the reality of our separate existences (Nozick, 1974). Nozick is one of those philosophers who ran up against the limitations of the liberty oriented conception throughout his career, and never seemed particularly satisfied with it. In a later work he acknowledged the problems the metaphysical doctrine of free will, and later generalized that to his political commitments. But Nozick never broke decisively with the framework developed in his (1974) *Anarchy, State, and Utopia*. The curious point here about Hayek is that, for all his popularity amongst libertarians, the moral commitment he shows to liberty does not flow from some deeper source. His commitment to liberty is not foundational, but contingent. He believes that free economic actors will act to maximize the general welfare because they behave in a manner that is guided by respect for the laws which has proven themselves effective over time. In this respect his approach is consequentialist in the last instance, but in a manner that is antithetical to its usual utilitarian interpretation. Hayek deeply opposes the Utilitarian belief that one can rationally assess the validity of social institutions in a manner that separates them from the complex process of natural selection he understands to characterize human history (Gray, 1986).

In the work of early liberal thinkers like Locke, this singular power is conceived as a curious metaphysical feature of human existence. We say curious because many of these thinkers accepted that human beings operated in a deterministic universe where empirical causality appeared to have a tremendous impact on the decisions made by individuals. This created a clear tension in their work between their commitment to empirical determinism and a moral commitment to the liberty oriented conception of agency. Later, this tension was eased but not eradicated in the work of thinkers such as Kant, Mill, Nozick, and Hayek. They attempted to save the philosophical backdrop of the liberty oriented conception of agency by stripping it of any strong metaphysical associations. Agency became a matter of concern purely in the realm of moral and political philosophy. Ambiguous questions about the genuine freedom of the will, were to be relegated to the realm of speculation and had little to do with the more Kantian “practical” side of moral thinking. This allowed liberal thinkers to claim that agency and scientific determinism were not in tension with one another. If they were not subject to empirical constraint, we could say individuals enjoyed agency from a moral point of view. While this had the fortunate side effect of nuancing the liberty oriented conception of agency, it also bolstered its ideological power by insulating its political and legal dimensions from criticism sustained philosophical criticism.

This point is subtle, but key. The transition to a practical philosophy of agency helped to de-mystify politics by cutting it off from the crude naturalism of Aristotelian and Scholastic thought. Every individual was now understood to possess a moral right to human agency, and socio-historical institutions which imposed illiberal constraints on them were condemned as illegitimate. For these reasons, the transition to practical philosophy can be seen as a liberating moment. But as Rousseau and his Hegelian and Marxist progeny pointed out very early, on there was a dark side to this transition. The transition to understanding at human agency from a purely practical standpoint was never completed, since the belief that the capacity for human agency consisted in a singular power that operated freely when unconstrained was never entirely abandoned. Liberal thinkers only conceived how the state might constrain agency through direct coercion. They were unwilling to conceive any other way that agency might be constrained by empirical circumstances, in part because this would require going beyond the limitations of the liberty oriented conception. This was a very unusual decision that seemed in tension with the twin aims of preserving a conception of agency, while also accepting the findings of the empirical sciences. But as Hegel, Marx and others pointed

out, empirical observation suggests that there are many ways beyond direct state coercion that individuals can be constrained. It seemed deeply arbitrary to focus exclusively on the state, and the way it either coerced individuals or let them live freely. If there is no metaphysical power which exists in all individuals which allows them to be free regardless of circumstance, and that freedom should be reconceived along empirical lines, then why shouldn't the totality of empirical circumstances be examined when trying to see how much agency an individual possesses? This seemed to be an obvious point, but many liberal thinkers were simply unwilling to go beyond the limitations of the liberty oriented conception.

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In this respect, the theories of later liberal thinkers remained insufficiently empirical and historical. The most overt example of this can be seen in the continued belief that government is a force of constraint, while the market is the realm of liberty and free exchange. The government is viewed as appropriating goods which individuals are entitled to, in order to use them in a way that their original owners might not have consented to. By contrast, the market is viewed as a system in social life where individuals exercise agency to engage in welfare maximizing choices. This, in turn, can be linked to a deeper belief that individuals can only express themselves through consumption and capital valorization, since it is only in these contexts that their choices are truly unconstrained and so their true self emerges. This demonstrates the persistent ideological power of the liberty oriented conception of agency, even when the philosophical transition required to supersede it had been undertaken. Even the best liberal thinkers, for all they qualified their ideological commitment to the liberty oriented conception, were unable to break from its constraints and conceive of agency in a more robust manner. If they had, they might have recognized that agency can and should be conceived more robustly, rather than as a singular power existing innate within the individual. Later in the paper, we will develop an alternative model of agency that eschews some of these limitations. Like the liberal thinkers, it takes agency to be a practical matter. However, it does not claim that agency is achieved by mere non-coercion. Instead, we should look at agency as a continuum determined by what individuals are actual capable of doing.

Before that though, we felt it is was important to highlight how the liberty oriented conception of agency works in practice. As we shall see, not only is the liberty oriented conception inadequate at the conceptual level. It has also never been fully applied in practice, in part because variations in power enable neoliberal actors tremendous leeway to shape the destinies of citizens. We will look at some of the ramifications this has had for individuals living in Latin America, particularly due to the impact of neoliberal markets.

3) Capital, the state, and the liberty oriented conception of agency

In this section, we sketch out the critical dimensions of our project. The ideological pervasiveness of the liberty oriented conception is such that it is the working philosophy of agency for most neoliberals, and their affiliates within capitalist firms. It has been relentless promoted across the globe as an obvious truth, collapsing traditional forms of governance and culturally diverse understandings

of agency. The constraints on agency which still exist and deepen are ignored by ideologues who cannot or will not recognize the fundamental limitations of their conception. This is especially true when those victimized by legacies of colonialism and contemporary neoliberal practices (grounded within the wider network of liberal traditions) belong to indigenous groups, who since Locke have possessed and practices various forms of resistance against the liberty oriented conception of agency.

Elizabeth Povinelli's term "late liberalism" demarcates the insignia of a shifting style of political management, emerging in Western democracies circa late 1960s. Povinelli develops the phrase late liberalism in her *Economies of Abandonment*, an analysis of the governance of social difference in settler colonies and in the wake of new social movements. Povinelli's work is primarily interested in the social divisions of "tense" to describe past and present territorialities, and arguably as some double entendre to denote the tensions between experiences of belonging that become affixed to a particular time or place (as any public discourse on indigeneity often does). For Povinelli, the tense is understood through a metapragmatic approach to discourse, which treats the tense as a temporal relationship; the junction between what is being narrated and the act of narrating it. Accordingly, narration shapes belonging to a community in late liberalism. Povinelli insists that 'tense' shapes indigenous people as autological subjects in a genealogical society. In other work, Povinelli provides a similar concept that she calls the governance of the prior, or the "mode of political imaginary and manoeuvre, in which prioriness is not a problem but a problematic that implicates settler and indigenous subjects" (Povinelli, 2011, p. 11). Povinelli further clarifies her concept of shared vernacular as the "*tense of the other*" in which social belonging is divided between the autological subject and genealogical society, such that, though mutually implicated, settler and indigenous subject are not implicated in the same way or to the same "ends" (Povinelli, 2011).

Povinelli's theory is useful here insofar as it allows us to better understand some of the assumptions that condition not only "post"-colonial relations, but also how agency in late liberalism, is underscored by a liberty-oriented concept of agency. Consequently, while many Western governments have acknowledged settlers and First Nations, Aboriginal or Indigenous communities to be mutually implicated in social and political life, those same governments have historically failed, in many cases, to acknowledge that these diverse communities were not and are not implicated in the same way or to the same ends. Povinelli's concept of the governance of difference is useful here insofar as it allows us to apply the conceptual tools of autological subjects and genealogical imaginaries—conceptual tools borrowed from both literary and political theory, to understanding how political, economic, and social events shape indigenous subject's capacity for agency.

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To reiterate, Povinelli's metapragmatic approach to discourse not only highlights these political tensions and contradictions, but does so through a metapragmatic approach to discourse that elucidates the constitution of language and meaning, driving us to ask what is exactly meant when one speaks of liberty, identity and agency. Questions of interpretation proliferate in socio-legal literature on indigeneity and legal pluralism. For many indigenous legal scholars, the liberty oriented conception of agency has led many to historically privilege textual documentation as formal contracts. This is because what is written down is the product of a clear author, a sign of their agency in transition. This treats oral histories, or other customs and traditions of passing down cultural knowledge and title claims, as extra-judicial. Povinelli's analysis of the governance of difference is still of use here, as the historical privileging of economic and political customs very obviously determines which legal customs are privileged in western jurisprudence, and which are rendered subsidiary or extra-judicial. To this end, Povinelli's conversation of recognition, rights and agency draws attention to those acts of narration which carry promote the liberty-oriented concept of agency through law, enabling it to reproduce itself in unique ways.

Povinelli argues that in late liberalism, textually focused narratives transmitted are often agency dampening. They reinforce the Hayekian style narratives promoted by states and capitalist firms and are given heightened interpretive authority. To many neoliberals, the emergence and spread of markets around the globe can only be agency enhancing, even when they disrupt and transform different social forms through violence and calculated apathy. This creates forms of resistance which the state is then called upon to crack down on, thus revealing the fundamental tension between enhancing agency through neoliberal markets and the need to use carceral authority against those who resist. The State is the arbitrator, guarantor and surveyor of social relations, insofar as the State will always remain the primary channel through which ideological and socio-economic relations are made into law. When policy become subject to global market capitalism, the orientations of ideological configurations (i.e., institutions) are bound to reflect market values. Burton and Carlen foreshadow this sentiment, insofar as they insist that the State is placed in a space outside of, but also determined by, the process of accumulation (Burton and Carlen, 1979, p. 37). The state is only formally placed outside of the purview of financial practice, insofar as the State or polity is simply an organized political entity, yet it is simultaneously subject to and determined by the process of accumulation. This is also why Zizek's, in his *Cynicism as a Form of Ideology*, reiterates Marx's elementary definition of ideology in *Capital*: "Sie wissen das nicht, aber sie tun es" ("they do not know it, but they are doing it"), or what Zizek refers to as a constitutive naïveté –the divergence between reality and our distorted representation (Zizek, 1989, p. 28). Moreover, in late

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liberalism even different forms of political are rendered malleable by market capitalism (a point we will elaborate upon later).

To provide further examples, Courtney Jung, in her (2003) *Neoliberalism, Cultural Rights, and the Mexican Zapatistas*, considers categories of belonging as they expose the coexistence of competing interior identities, made possible through shared and interconnecting spaces of political and economic agency which deviate from neoliberal logic. As Jung observes, the “Zapatistas themselves were embedded in the organizational and ideological history of years of peasant struggles in Chiapas, in the Marxist lines of the 1970s, in liberation theology, and in the revolutionary politics of Central American uprisings” (Jung, 2003, p. 435). To this end, the Zapatistas, or *Ejército Zapatista de Liberación Nacional* (EZLN), issued the First Declaration of the Lacandon Jungle on January 2, 1994, and specifically defined the purpose of their uprising as an uprising of the greater peasant and working class (Jung, 2003, p. 454). At the same time, Jung suggests that the EZLN was somewhat ambivalent in its attempt to articulate a common sense of shared agency, eventually moving between indigenous or peasant identities because both claims shared spaces of poverty and marginalization (Jung, 2003, pp. 454-5). What Jung is alluding to is a shift in how claims to identity, as expressions of agency, have been historically effective in attaining formal, or State recognition. This suggests that categories of agency within shared spaces of resistance are not necessarily competing so much as they are being forced into change or development by globalization and particularly the pervasive power of market capitalism. Of course, this challenges assumptions about how indigenous groups have historically asserted their agency. For Jung, the ‘homogenizing drive’ of neoliberal globalization is pervasive, and a sense of collective political agency only develops a political resonance to the extent that it is employed by the state itself as the marker of in/exclusion (Jung, 2003, pp. 435-436). Jung interprets agency as the condition of participation in a global political dialogue, but perhaps a more malleable definition would suggest that agency *becomes* the condition. Either way, Jung’s argument references the late historical circumstances around the emergence of “indigenous” as an official form of political and legal identity in the 1990s.

The consequence of insisting that identity is only useful insofar as it is recognized by the state also implies, as Jung insists, that access toward the legal category of “indigenous” is determined by a working familiarity with legal and political conventions, operations and discourses concerning the processes by which the State is willing to acknowledge indigeneity as a ‘legitimate identity’. Consequently, these restrictions upon the avenue which is legitimized by the state for asserting an identity politics has bearing on the political utility of expressing agency. This point is interesting given that Jung is implying that formally entrenched legal codes begin to matter more, politically, than bloodline or ancestry in assigning credence to title claims. Perhaps this is true, but nevertheless, this point ignores the fact that political calculations in connection with the degree to which the State is willing to acknowledge an individual’s claim to indigeneity have also historically been bound to political acts of interpreting bloodlines and genealogies in other ways (for more on this specific topic, please refer to Maddison’s *Indigenous identity, ‘authenticity’ and the structural violence of settler colonialism*, 2013).

Although this doesn’t take away from the thrust of Jung’s argument, it reveals that an identity politics and an accompanying agency of political resistance is capable outside the state apparatus, as it must exist *before* the state –indeed this is implicated in the literal sense of what constitutes settler society. As Jung shows, however, the Zapatista movement didn’t initially recall that category

of cultural belonging in its attempt defend against the pervasive nature of market capitalism, but instead drew upon narratives of peasantry and worker struggles to express a common agency. This is perhaps especially interesting given former President Zedillo's decision to ignore the *San Andres Accord*, and to ignore those agreements made with all representatives of indigenous communities in Mexico and to instead lend further support to parties like the *Democratic Revolution Party* and the *National Action Party*. Jung shows how the Zapatistas embraced an indigenous agency only after talks with government a fact that, as Neil Harvey (2001) points out in his *Globalisation and resistance in post-cold war Mexico: difference, citizenship and biodiversity conflicts in Chiapas*, would continue to undergo change and face challenge, particularly in the post-revolutionary state form. Their interaction with the state demonstrated the tight alignment between capital and the state and its agency inhibiting features. Harvey characterizes this 'corporatist citizenship' as an accompaniment to the landing of transnational corporations in indigenous occupied areas of the Chiapas, seeking to assimilate some 56 distinct ethnic groups into a single, Spanish-speaking and 'modern' society (Harvey, 2001, p. 1047).

The socio-historical circumstances of the Zapatista uprisings demonstrate that attaining 'legitimacy' in accordance with the state requires a very confined expression of collective agency.

In other words, corporate citizenship demands the agency of the neoliberal individual be expressed in opposition to the agency of a collective assemblage, thereby rejecting certain social movements by virtue how they choose to express agency. The Zapatistas rejected this offer, preferring to adopt an indigenous identity with agency not constrained by a state oriented strictly to the interests of capital. Not only does this explain a degree of semblance between different literatures on indigenous legal issues more generally, but it does so by making what is an obvious point: namely, that any form of recognition on part of the state is the acknowledgment of some sort of synthesis of competing interior identities that seed to the liberty-oriented conception of agency. This conception of agency relies upon an emphasis upon the relationship between the individual and "his" private property, and consequently, the late liberal repackaging of liberty and agency permeates 'new' liberalism, especially as the supposed retaliation against this intimate co-existence of personal liberty and private liberty seems to manifest as more simply the expression of cultural, economic and political belonging bound to and by processes of market capitalism. Consequently, and because indigeneity is so often quite difficult to define (and such attempts at definition are historically bound to political measurements of bloodlines and genealogies), spaces and methods of political and economic resistance are effective if they avoid 'conflicts of citizenship'. Put differently, efforts to garner recognition on part of the state, in most cases, demand working within the language of the state, or the official discourse, as it were. To paraphrase Franz Fanon's *Black Skin, White Masks*, to possess a world requires that one possess the language expressed within and by that world (Fanon, 1967, p. 18).

The socio-historical circumstances of the Zapatista uprisings demonstrate that attaining 'legitimacy' in accordance with the state requires a very confined expression of collective agency. One can also point to Coates' (2004) juxtaposition of the cultivation of financial capitalism with the cultivation of physical landmass (Coates, 2004, p. 219), and how this reflects Harvey's rumination on how and why the Zapatista movement went public on the day when the North American Free Trade Agreement (NAFTA) went into effect (January 1, 1994) (Harvey, 2001, p. 1084). The imminences of settler-colonialism were realigned as countries such as Mexico were absorbed into the global economy. As Harvey draws attention to a struggle between market citizenship and pluri-ethnic citizenship, Coates considers how liberal guilt and the emergence of an ideology of equality paved the way for meeting the requirements of market-citizenship (for more on this concept of market-citizenship please refer to Burton and Carlen (1979, p. 36) specifically their conversation concerning the *capital logic position*). In other words, the pressures of global market capitalism weigh on which avenues of recourse have efficacy in gaining political traction at a national level, to the degree that a liberty-oriented concept of agency permeates even/especially those state sponsored espousals of 'collective' equality.

The malleability of a self-declared agency is both the strong tool for the assertion of political agency and, at the same time, an identification of the contingency of the liberty-oriented conception of agency as it might be applied to the circumstances of late liberalism and global market capitalism. It is in fact, we believe, exactly this tension that demonstrates a space for critique and further dialogue. Moreover, the rhetoric and textual vehicles by which these party platforms are represented seems to express another matter Povinelli has dealt with in her own work: namely, the notion of a 'shared vernacular' that transmits different interpretive meaning across ideological platforms. To reiterate, for Povinelli it is not that governments and indigenous communities dialogue in complete contrast, but moreover, that a shared vernacular exists in which meaning is malleable if not porous. In the same way, as we shall see, agency is a matter of degree rather than a black and white contrast.

4) The capabilities approach to agency

Many of the movements we examined in the last section drew on the power of identity and indigeneity to assert their agency against the corporatist demands of the neoliberal state. We commend their courage and innovation. However, the limits to these examples are clear. While they can provide inspiration to other movements across the globe, and even considerable practical guidance, the conceptual lessons are considerably limited to the time and place of their emergency. Instead, we believe that that take away from movements like the Zapatistas is that agency must continuously be negotiated and fought for. This suggests that agency is not a declaration but a continuum that depends on a wide variety of circumstances within the particularities and divisions of context. Theorizing on this might provide conceptual guidance to other groups looking to avoid the limitations of neoliberal logics and the affiliated liberty oriented conception of agency.

The pluralistic conception of agency developed in this section draws heavily on the capabilities approach pioneered by Amartya Sen and Martha Nussbaum

The pluralistic conception of agency developed in this section draws heavily on the capabilities approach pioneered by Amartya Sen and Martha Nussbaum. Their dynamic partnership has produced some of the most stimulating and important intellectual work on agency in some time. We believe it represents the most well reasoned alternative to the liberty oriented conception, while still wisely retaining the focus on agency characteristic classical liberalism. Drawing tremendous inspiration from Rawls' pioneering efforts, the capabilities approach to human agency outlines the universal but context sensitive conditions required for all human beings to enjoy a dignified life. The approach takes securing the dignity of human beings as a primary aim, echoing the thought of Sen and Nussbaum integrally link dignity to an agent's choices; but agency is understood here in a pluralistic way. To discuss agency concretely, we must look at the actual capacity an individual has to make meaningful life choices in various different social contexts. This is where the connection between the capabilities approach and Utilitarianism is most apparent, but crucially, Sen has been especially critical of Utilitarians for not being adequately sensitive to the meaningful differences that exist between individuals (Sen, 1992, p. 59, and Sen, 1999, pp. 17-21).

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Human agency is not an abstract power which merely exists *a priori*. The transcendental dimension of agency is ideational: by willing my own ends I can become author of my identity. This suggests that Kantian individualism remains the moral centre inspiring his project. But this is accomplished through what practical choices and individual can make within a socio-historical context. To this effect, Sen accepts the Utilitarian claim that substantiating agency is as much a matter of developing sound policy as it is deriving the correct transcendental metaphysics (Sen, 2009). In *Inequality Re-examined*, Sen clarifies this point by referring to the capabilities an individual possesses as determining the "overall agency a person enjoys to pursue her well-being" (Sen, 1992, p. 150). He distinguishes between the 1) wellbeing of individuals and 2) their agency to pursue well-being. This is a key distinction since Sen admits that one's well-being and the agency to pursue it or not (what he calls agency) may in many instances conflict. He gives the example of a doctor who is willing to sacrifice her health to secure that of others, though one can think of many far less admirable examples (Sen, 1992, p. 61). For example, this might also involve the capability to make what seem like unhealthy choices. A Brahmin who decides to fast for religious reasons is emphatically different from an individual struggling in the midst of famine. Nussbaum claims that this distinction highlights the link between the deontological and Utilitarian dimensions of the capabilities approach to human flourishing — a linkage toward Sen's emphasis on freedom (Giri, 2000). Since agency flourishing entails being able to make meaningful choices through the exercise of some practical reason, all individuals should have the capabilities needed to pursue their own idea of human flourishing (please refer to Sen, 2009).

After this threshold is met, the capabilities approach to human flourishing is agnostic on the actual functioning of people, since their flourishing or not is now seen as dependent on individual choices. This brings us to discussing the Aristotelian dimension of the capabilities approach to agency

– interestingly, Nussbaum links this Aristotelian dimension with her account of human dignity (Nussbaum, 2006, pp. 159-160). Until recently, the capabilities approach to human agency was quite unique in programmatically arguing for a liberal theory of the good life, rather than just engaging in Rawls inspired “transcendental institutional” deductions to abstractly demarcate the correct political institutions required for the co-existence of free individuals. Sen has been markedly more reserved than Nussbaum in discussing this Aristotelian dimension to the capabilities approach. We believe that this was a mistake. In sum, we believe. This is connected to his unwillingness to “list” the fundamental capabilities he takes to be important (Sen, 2004). By engaging the Aristotelian dimensions of the project, Nussbaum has been filling in a notable gap in liberal theory which has provided critics such as Alasdair Macintyre with grist for the illiberal mill (Macintyre, 1989, pp. 326-348). She is also able to substantiate her claims about giving an account of what constitutes human dignity.

For Nussbaum, robust agency is a precondition for living a good life. Those who hold to the liberty oriented conception of agency have gone wrong in assuming that agency only involves not interfering with the lives of others. In her view, this liberty oriented conception agency is both too individualistic and not individualistic enough. It presumes, for example, that most people pursue their own happiness in a social vacuum. The liberty oriented conception of agency is unable to recognize what Aristotle taught us; that humans are social beings whose happiness is in no small part dependent on establishing and maintaining meaningful relationships with others. The liberty oriented conception of agency is also not individualistic enough for very similar reasons. By looking at individuals abstractly, and not recognizing sufficiently the meaningful differences that exist between them, the liberty oriented conception of agency has not acknowledged the existence of socio-historical boundaries that makes liberty, as classically understood, more valuable to some and virtually meaningless to others.

For Nussbaum, these intuitions can lead us to a liberal account of the good life (Nussbaum, 2006, pp. 160-164). This is summarized nicely, if critically, by Linda Barclay (2003):

“It seems to me that Nussbaum’s theory of capabilities is best and most consistently described as a theory that takes as its most central value the realization of each individual’s capacity to choose and pursue their own conception of the good life. It is the capacity for choices in key areas of human activity that is the central value underlying her approach, and in that sense it is indeed capability and not functioning that is valuable, and not just for the purpose of politics.” (p. 17)

Nussbaum believes that all individuals are capable of becoming robust agents who can substantially choose which relationships they wish to establish and which life plans they wish to enact. These relationships and life plans are what make their lives meaningful. A theory of agency guided by the capabilities approach would accept, and even embrace, those individuals who wish to pursue an esoteric vision of the good life, so long as they do so consciously rather than being coerced into it by

The capabilities approach to agency awakens us to the need to cease understanding agency as flowing from a singular power that can operate freely if not constrained

others. An excellent, and timely, example would be allowing Muslim women the right to wear the hijab or niqab (or not should they so choose) (Nussbaum, 2011, ch. 1 & ch. 2).

The capabilities approach to agency awakens us to the need to cease understanding agency as flowing from a singular power that can operate freely if not constrained. By recognizing that agency is a matter of what one is actually capable of doing, we can better understand how agency can be constrained by factors that go beyond direct coercion. This is why we have characterized it as a pluralistic conception of agency. Rather than taking agency to flow from a singular power which operates so long as it is unconstrained, a pluralistic conception understands that there are many ways in which agency can be constrained and amplified. Not having a sufficient caloric intake to function capably can be understood as a constraint on agency, as can not receiving an adequate education to exercise one's practical reason. The moral corollary of this point is that agency is often deeply constrained socio-historical factors which the liberty oriented conception does not take into account. In many cases, as we have, it actively perpetuates forms of marginalization that are agency dampening. If one wishes to preserve the liberal belief that being an individual agent is of significance, we must also look more critically at what socio-historical factors impose constraints on individuals and whether they can actually be justified because they amplify the agency and dignity of all individuals.

Given all this, it seems clear that one cannot say the neoliberal state adequately respects and enhances the agency of its citizens. By concentrating wealth in the hands of a few while interpolating individuals as corporatist actors along the lines of the liberty oriented conception of agency, it increasingly poses barriers to the effective amplification of agency. The state has not been militant enough in distributing goods to ensure that individuals become more capable of choosing which relationships they wish to pursue, and which life plans to enact. Instead it has become beholden to the interests of capital, and the few who stand to benefit from its unbridled operation. If the conception of agency sketched out here is worthwhile, it suggests that a decent state should take a much more active role in amplifying the capabilities of all individuals. As it stands now, far too few people are capable of agency in the most robust possible sense. This is a moral travesty that should be rectified.

4. In conclusion

This paper has explored how agency has been framed at a philosophical level, and the ramifications of this in everyday practice. We have shown how the liberty oriented conception of agency developed and mutated over the years. We then argued that it was inadequate at both the conceptual level, and in empirical practice. Conceptually the liberty oriented conception of agency wrongly understands freedom as flowing from a singular power that operates freely as long as it is not directly constrained. We demonstrated that this is highly implausible, especially when faced with the more empirically minded critiques that emerged in the 19th century.

We then argued that the liberty oriented conception of agency has had insidious effects in practice as part of the ideology of the neoliberal era. The relationship of the modern neoliberal state and global market capitalism to the agency of individuals is complicated and at times contradictory. But if one point ought to be made here it is that going beyond the limitations of these relationships will entail moving past the liberty-oriented interpretation of agency. As we have seen, the neo-liberal

state professes faith in the liberty oriented interpretation of agency in no small part because it enables powerful actors a great deal of control over the lives of citizens. Contrary to the claims of thinkers like Nozick, the 'minimal' state does not respect the liberty of its citizens, and moreover, the so called minimal state quite often actively seeks to erode or deny claims toward nuanced forms of citizenship. The homogenizing drive of Neoliberalism enables investment in the espoused sanctity of the individual and the individual's private property to limit agency to a form pre-determined by the latent political promise of isolated liberty.

Our paper concluded with a sketch of a pluralistic conception of agency drawn from the capabilities approach of Amartya Sen and Martha Nussbaum

Our paper concluded with a sketch of a pluralistic conception of agency drawn from the capabilities approach of Amartya Sen and Martha Nussbaum. This conception maintains that agency is a continuum determined by what individuals are actually capable of doing. The more capable they are of forming relationships and pursuing robust life plans the more agency they can be said to enjoy. If this model of agency is attractive, it suggests that the kind of agency realized in the neoliberal state is deeply inadequate, precisely because it precludes other forms of belonging from a certain political worth oriented around and bound to market capitalism. In the future, we hope to develop this conception of agency more concretely by spelling out what a more just state would do to acknowledge, respect, and amend historical processes of injustice, rather than privileging capital accumulation. For now, however, we will just say that it is long past time we abandoned the liberty oriented conception of agency and started looking instead at the actual empirical circumstances which only further restrain our capabilities.

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